

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

ELLEN M. ANDARY, a legally incapacitated adult, by and through her Guardian and Conservator, MICHAEL T. ANDARY, M.D., PHILIP KRUEGER, a legally incapacitated adult, by and through his Guardian, RONALD KRUEGER, & MORIAH, INC., d/b/a EISENHOWER CENTER, a Michigan corporation,

Plaintiffs,

v

USAA CASUALTY INSURANCE COMPANY,
a foreign corporation, and CITIZENS
INSURANCE COMPANY OF AMERICA,
a Michigan corporation,

Defendants.

Case No. 19-738-CZ
Hon. WANDA M. STOKES

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COMPLAINT FOR DECLARATORY JUDGMENT

THERE IS NO OTHER PENDING OR RESOLVED CIVIL ACTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE AS ALLEGED IN THE COMPLAINT.



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NOW COMES Plaintiff Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., Plaintiff Philip Krueger, a legally incapacitated adult, by and through his Guardian, Ronald Krueger, and Plaintiff Moriah Inc., d/b/a Eisenhower Center, by and through their attorneys, **Sinas, Dramis, Larkin, Graves & Waldman, P.C.** and **Mark Granzotto, P.C.**, and by way of their Complaint for Declaratory Judgment against Defendant USAA Casualty Insurance Company, a foreign corporation, and Defendant Citizens Insurance Company of America, a Michigan corporation, state the following:

This Complaint for Declaratory Judgment contains the following Counts:

Count I – Application of the Attendant Care Limitations set forth in MCL 500.3157(10) to Ellen M. Andary Violates her Constitutional Contract Rights Under Article 1 Section 10 of the Michigan Constitution

Count II – Application of the Attendant Care Limitations set forth in MCL 500.3157(10) to Ellen M. Andary Violates her Constitutional Due Process Rights Under Article 1 Section 17 of the Michigan Constitution

Count III – Application of the Attendant Care Limitations set forth in MCL 500.3157(10) to Ellen M. Andary Violates her Constitutional Equal Protection Rights Under Article 1 Section 2 of the Michigan Constitution

Count IV – Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to Ellen M. Andary Violates her Constitutional Contract Rights Under Article 1 Section 10 of the Michigan Constitution

Count V – Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to Ellen M. Andary Violates her Constitutional Due Process Rights Under Article 1 Section 17 of the Michigan Constitution

Count VI – Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to Ellen M. Andary Violates her Constitutional Equal Protection Rights Under Article 1 Section 2 of the Michigan Constitution



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Count VII - Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to Philip Krueger for Treatment Rendered to Him by Plaintiff Eisenhower Center Violates his Constitutional Contract Rights Under Article 1 Section 10 of the Michigan Constitution

Count VIII - Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to Philip Krueger for Treatment Rendered to Him by Plaintiff Eisenhower Center Violates his Constitutional Due Process Rights Under Article 1 Section 17 of the Michigan Constitution

Count IX - Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to Philip Krueger Violates his Constitutional Equal Protection Rights Under Article 1 Section 2 of the Michigan Constitution

Count X - Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to Plaintiff Eisenhower Center for Services it Renders to Plaintiff Philip Krueger Violates its Constitutional Contract Rights Under Article 1 Section 10 of the Michigan Constitution

Count XI - Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to Plaintiff Eisenhower Center Regarding Services it Renders to all Motor Vehicle Accident Victims Past, Present, or Future, Violates its Constitutional Due Process Rights Under Article 1 Section 17 of the Michigan Constitution

Count XII - Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to Plaintiff Eisenhower Center Regarding Services it Renders to all Motor Vehicle Accident Victims Past, Present, or Future Violates its Constitutional Equal Protection Rights Under Article 1 Section 2 of the Michigan Constitution

Count XIII - Future Application of the Attendant Care Limitations set forth in MCL 500.3157(10) to all Motor Vehicle Accident Victims Past, Present, or Future, Violates the Constitutional Due Process Rights of Those Persons Under Article 1 Section 17 of the Michigan Constitution

Count XIV - Future Application of the Attendant Care Limitations set forth in MCL 500.3157(10) to all Motor Vehicle Accident Victims Past, Present, or Future, Violates the Constitutional Equal Protection Rights of Those Persons Under Article 1 Section 2 of the Michigan Constitution

Count XV - Future Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to all Motor Vehicle Accident Victims, past, Present, or Future, Violates the Constitutional Due Process Rights of Those Persons Under Article 1 Section 17 of the Michigan Constitution



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Count XVI - Future Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to all Motor Vehicle Accident Victims Past, Present, or Future, Violates the Constitutional Equal protection Rights of Those Persons Under Article 1 Section 2 of the Michigan Constitution

Count XVII - Future Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to any Michigan Medical Provider Violates the Constitutional Due Process Rights of Those Providers Under Article 1 Section 17 of the Michigan Constitution

Count XVIII - Future Application of the Fee Schedule Limitations set forth in MCL 500.3157(7) to any Michigan Medical Provider Violates the Constitutional Equal Protection Rights of Those Providers Under Article 1 Section 2 of the Michigan Constitution

In support of these Counts, Plaintiffs say as follows:

GENERAL ALLEGATIONS

1. Plaintiffs bring this action requesting declaratory relief from this Honorable Court, pursuant to MCR 2.605, for the purpose of defining the rights of said parties under the respective insurance contracts identified in this lawsuit and in connection therewith to declare that MCL 500.3157(2), MCL 500.3157(7) and MCL 500.3157(10) are unconstitutional pursuant to the Contracts Clause of the Michigan Constitution, Const 1963, art 1 § 10, the Due Process Clause of the Michigan Constitution, Const 1963, art 1 § 17, and the Equal Protection Clause of the Michigan Constitution, Const 1963, art 1 § 2, thereby preventing Defendant USAA Casualty Insurance Company and Defendant Citizens Insurance Company of America from enforcing said unconstitutional provisions with respect to the Plaintiffs and others similarly situated.

2. Defendant USAA Casualty Insurance Company (hereinafter “*Defendant USAA*”) is a foreign insurance company authorized to transact the business of no-fault



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insurance in the State of Michigan, and does, in fact, regularly and systematically conduct business in Ingham County, Michigan.

3. Defendant Citizens Insurance Company of America (hereinafter "*Defendant Citizens*") a Michigan insurance company authorized to transact the business of no-fault insurance in the State of Michigan, and does, in fact, regularly and systematically conduct business in Ingham County, Michigan.

4. Venue is proper pursuant to MCR 600.1621(1).

5. Ellen M. Andary was born on February 1, 1957.

6. At all times pertinent hereto, Ellen M. Andary, and Michael T. Andary, M.D. have been husband and wife and have resided together, and continue to reside at, 1461 Foxcroft Road, East Lansing, Ingham County, Michigan.

7. Michael T. Andary, M.D. is a physician in good standing licensed to practice medicine in the State of Michigan and has been so licensed since 1983.

8. On March 19, 2015, Michael T. Andary, M.D. was appointed Guardian and Conservator for Ellen M. Andary, a legally incapacitated adult, pursuant to Orders issued by the Ingham County Probate Court. A copy of these Orders is attached *Exhibit 1*.

9. On December 5, 2014, Ellen M. Andary was a passenger in a motor vehicle traveling southbound on US-127 near Mount Pleasant when said vehicle was struck head-on by a drunk driver proceeding in the wrong direction on the roadway.

10. As a result of the head-on motor vehicle accident described above, Ellen M. Andary suffered nearly fatal injuries, including, but not limited to, a catastrophic brain injury, multiple internal injuries, numerous fractures, and other assorted traumatic



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bodily injuries. These injuries required prolonged in-patient hospitalization from December 5, 2014 to approximately June 5, 2015, multiple surgeries, and extensive rehabilitative training.

11. At the conclusion of Ellen M. Andary's in-patient hospitalization, she was discharged to her home, and was, at that time, and continues to be, totally and permanently disabled and incapable of taking care of herself.

12. Since her discharge from Sparrow Hospital on approximately June 5, 2015, Ellen M. Andary has been prescribed, and continues to receive, 36 hours of in-home attendant care services per day, consisting of approximately 24 hours of unskilled attendant care and 12 hours of skilled attendant care.

13. The majority of Ellen M. Andary's in-home attendant care services are provided by members of her family, including her children, Catherine Andary, Caroline Andary, William Andary, Michelle Andary, and Steven Andary. These in-home attendant care services are supervised by her physician husband, Michael T. Andary, M.D.

14. Since her hospital discharge, the in-home attendant care required by Ellen M. Andary has been provided by her family in accordance with a program that is designed to maximize her rehabilitation and her re-integration into her pre-accident life, to the extent possible. Participation of Ellen M. Andary's family members in this in-home attendant care program has been, and continues to be, essential to maximizing her quality of care.



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15. If Ellen M. Andary were forced to have attendant care services rendered to her by strangers rather than her family members, she would likely suffer serious and deleterious consequences to her overall health status and rehabilitation.

16. Ellen M. Andary continues to require regular medical treatment from various physicians and therapists for her ongoing injuries and related disabilities. This includes, but is not limited to, care and treatment rendered by Rebecca Wyatt, D.O. of Origami Brain Injury Rehabilitation Center; James Sylvian, D.O. of MSU Rehabilitation; John Siano, M.D. of Lansing Internal Medicine; Eric Eggenberger, D.O., Andrew Saxe, M.D., and David Young, D.O. of Sparrow Health System; Mounzer Yassin-Kassab, M.D. and Daniel Havlicheck, M.D. of MSU Clinical Center; Timothy Heilman, D.O. and Charles Bill, M.D. of Lansing Neurosurgery; Rafid Yousif, M.D. of Lansing Institute of Urology; Joseph Conrad, M.S. of Eyecare Associates of DeWitt; Charles Taunt, D.O. of Michigan Orthopedic Center; Daniel Langhosrt, O.D. of Eyecare Associates of Haslett; Beth Spitzley, RPT of the Center for Integrative Medicine of Okemos; Mary Hunt, D.O.; and various therapists at Assessment Rehab Management.

17. At the time of her December 5, 2014 motor vehicle accident, Ellen M. Andary and Michael T. Andary, M.D. were insured under a policy of automobile no-fault insurance issued by Defendant USAA, bearing policy number 00278 70 84C 7102 3. A copy of this policy and declaration sheet is attached as *Exhibit 2*.

18. As a result of the aforementioned catastrophic injuries sustained by Ellen M. Andary, she has been, and continues to be, entitled to receive certain no-fault personal protection ("PIP") benefits under § 3107(1)(a) of the Michigan No-Fault Act and her no-



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fault insurance policy with Defendant USAA, which benefits include, but are not limited to, allowable expenses defined as all “*reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation.*”

19. At the time of the December 5, 2014 motor vehicle accident, the allowable expense benefits set forth in § 3107(1)(a) of the Michigan No-Fault Act, and in Ellen M. Andary’s policy with Defendant USAA, entitled her to recover payment for all reasonable charges for all reasonably necessary in-home attendant care services, without regard to the identity of the attendant care service provider, or the number of hours of attendant care services rendered to her by any particular service provider.

20. At the time of the December 5, 2014 motor vehicle accident, the allowable expense benefits set forth in § 3107(1)(a) of the Michigan No-Fault Act and Ellen M. Andary’s policy with Defendant USAA entitled her to recover payment for all reasonable charges for all reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation without regard to any form of government or private fee schedules.

21. The premium paid by Ellen M. Andary, and her husband, Michael T. Andary, M.D., for her aforesaid auto insurance policy with Defendant USAA was priced and sold based upon the fact that said policy entitled her to full in-home attendant care services without regard to the identity of the service provider, and further entitled her to reimbursement for all reasonable charges for all reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation without regard to any government or private fee schedules. That premium had been fully paid by Ellen M.



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Andary, and Michael T. Andary, M.D. as of the date of Ellen M. Andary's December 5, 2014 accident, and therefore all rights Ellen M. Andary had as of that date were fully vested.

22. Philip Krueger was born on January 25, 1972.
23. At all times pertinent hereto, Philip Krueger has been a resident of Ann Arbor, Washtenaw County, Michigan.
24. Ronald Krueger is the father of Philip Krueger.
25. In 1997, Ronald Krueger was appointed Guardian for Philip Krueger, a legally incapacitated adult, pursuant to an Order issued by the Genesee County Probate Court.
26. On March 10, 1990, Philip Krueger was a passenger in a pickup truck that was involved in a serious motor vehicle accident.
27. As a result of the motor vehicle accident described above, Philip Krueger suffered injuries, including, but not limited to, a traumatic brain injury, a collapsed lung, a broken pelvis, and a neurological injury to his left foot.
28. Since the March 10, 1990 accident, Philip Krueger has been, and continues to be, totally and permanently disabled and incapable of taking care of himself.
29. At the time of his March 10, 1990 motor vehicle accident, Philip Krueger was insured under a policy of automobile no-fault insurance issued by Defendant Citizens.
30. As a result of the aforementioned catastrophic injuries sustained by Philip Krueger, he has been, and continues to be, entitled to receive certain PIP benefits under §



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3107(1)(a) of the Michigan No-Fault Act and his no-fault insurance policy with Defendant Citizens, which benefits include, but are not limited to, allowable expenses defined as all "*reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation.*"

31. At the time of the March 10, 1990 motor vehicle accident, the allowable expense benefits set forth in § 3107(1)(a) of the Michigan No-Fault Act and Philip Krueger's policy with Defendant Citizens entitled him to recover payment for all reasonable charges for all reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation without regard to any form of government or private fee schedules. Since the March 10, 1990 accident, these benefits have been paid pursuant to Defendant Citizens' claim number 25-90-000439.

32. The premium paid on behalf of Philip Krueger, for his aforesaid auto insurance policy with Defendant Citizens, was priced and sold based upon the fact that said policy entitled him to reimbursement for all reasonable charges for all reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation without regard to any government or private fee schedules. That premium had been fully paid on behalf of Philip Krueger as of the date of his March 10, 1990 accident, and therefore all rights Philip Krueger had as of that date were fully vested.

33. Plaintiff Moriah, Inc., d/b/a Eisenhower Center (hereafter referred to as "*Plaintiff Eisenhower Center*"), is a Michigan corporation engaged in the profession of providing products, services, and accommodations for the care, recovery, or rehabilitation of individuals suffering traumatic brain injuries.



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34. Plaintiff Eisenhower Center has facilities in Ann Arbor, Washtenaw County, Michigan, where it provides inpatient living accommodations to individuals with traumatic brain injuries who are not able to live independently and who require a structured environment due to their disabilities.

35. Plaintiff Eisenhower Center also provides comprehensive neuro-rehabilitation programs and related services to its patients, including, but not limited to, occupational therapy, psychology, program coordination, health education/nursing, supported employment, behavior analysis, supervision, recreation, transportation, substance abuse prevention services, supported apartment living, sustained care, transitional care, social work services, case management services, neuropsychological testing, physical therapy, speech and language pathology, community activities, room and board, and all of the other related and cognate services typically provided by a comprehensive, accredited, and certified neuro-rehabilitation program.

36. The vast majority of Plaintiff Eisenhower Center's patients, like Philip Krueger, have suffered their disabilities as a result of motor vehicle accidents. Presently, of the 156 residential patients at Plaintiff Eisenhower Center's Ann Arbor facility, approximately 130 of those patients are motor vehicle accident victims whose care, recovery, or rehabilitation is funded by no-fault PIP benefits payable under § 3107(1)(a) of the Michigan No-Fault Act.

37. Following the March 10, 1990 motor vehicle accident, in approximately November 1997, Philip Krueger began receiving residential accommodations and other



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reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation from Plaintiff Eisenhower Center.

38. Philip Krueger and Plaintiff Eisenhower Center entered into a contractual relationship (express or implied) in which Plaintiff Eisenhower Center agreed to provide reasonably necessary products, service, and accommodations to Philip Krueger for his care, recovery, or rehabilitation. These parties entered into this contractual relationship relying upon the ability of Philip Krueger to fund his financial obligations to Plaintiff Eisenhower Center. At the time these parties entered into these contractual relationships, Philip Krueger had funding under § 3107(1)(a) of the No-Fault Act, through his insurance policy contract with Defendant Citizens, that enabled him to obtain reimbursement for all reasonably necessary products, services, and accommodations he was receiving from Plaintiff Eisenhower Center. This right to funding vested at the time of Philip Krueger's March 10, 1990 accident and was vested when he entered into the contract with Plaintiff Eisenhower Center. Had Philip Krueger not had this funding source, Plaintiff Eisenhower Center would not have been able to enter into a contractual relationship with Philip Krueger to provide him the reasonably necessary products, services, and accommodations he has been receiving from Plaintiff Eisenhower Center ever since he became a patient.

39. Plaintiff Eisenhower Center also entered into similar contracts (express or implied) with its other motor vehicle accident patients prior to June 11, 2019.

40. On May 25, 2019, the Michigan Legislature passed Enrolled Senate Bill No. 1 (hereinafter "SB 1") which was signed into law by Governor Whitmer on May 30, 2019.



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On June 4, 2019, the Legislature passed Enrolled House Bill No. 4397 (hereinafter "HB 4397"), which included some modifications and clarifications to SB 1, and was signed by Governor Whitmer on June 11, 2019. On June 11, 2019, SB 1 and HB 4397 were filed with the Michigan Secretary of State's Office of the Great Seal and assigned Public Act number 21 of 2019 and Public Act number 22 of 2019 (hereinafter referred to as "PA 21" and "PA 22"). A copy of PA 21 is attached as *Exhibit 3*. A copy of PA 22 is attached as *Exhibit 4*.

41. PA 21 and PA 22 enacted sweeping changes to the existing Michigan No-Fault Act (MCL 500.3101 *et seq.*), many of which went into effect on June 11, 2019. In some circumstances these changes purport to apply to persons injured in motor vehicle accidents that occurred prior to June 11, 2019.

42. Among the many changes, PA 21 enacted significant limitations on the right of an injured person to receive reimbursement for in-home attendant care services rendered by members of the injured person's family. Essentially, PA 21 provides that no-fault benefits are not payable for in-home family provided attendant care services that exceed a 56 hour per week (8 hours per day) limitation. This limitation is contained in MCL 500.3157(10), which states in pertinent part:

(10) *For attendant care rendered in the injured person's home, an insurer is only required to pay benefits for attendant care up to the hourly limitation in section 315 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.315. This subsection only applies if the attendant care is provided directly, or indirectly through another person, by any of the following:*

- (a) *An individual who is related to the injured person.*
- (b) *An individual who is domiciled in the household of the injured person.*



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(c) An individual with whom the injured person had a business or social relationship before the injury.

43. The limitation on in-home family provided attendant care set forth in § 3157(10) does not go into effect until July 1, 2021. However, this limitation will supposedly apply to seriously injured motor vehicle accident victims, like Ellen M. Andary, that were injured prior to June 11, 2019.

44. Pursuant to the provisions of PA 21, beginning on July 1, 2021 Ellen M. Andary will presumably no longer be entitled to receive reimbursement for in-home family provided attendant care rendered to her in excess of 56 hours per week (8 hours per day). If this limitation is enforceable, Ellen M. Andary's health and welfare may be adversely affected by the requirement that she receive care from strangers and other non-family members.

45. Moreover, if the aforementioned in-home family provided attendant care limits were to apply to Ellen M. Andary, she would be denied the full benefits under her insurance contract policy with Defendant USAA, which she and her husband, Michael T. Andary, M.D., purchased and which were in full force and effect on the date of her December 5, 2014 accident.

46. In addition to the limitation on in-home family provided attendant care, PA 21 also enacted fee schedules that dramatically limit a no-fault insurer's obligation to reimburse expenses for reasonably necessary products, services, and accommodations rendered for the care, recovery, or rehabilitation of motor vehicle accident victims. These limitations are contained in MCL 500.3157(2) and (7), which state in pertinent part:



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(2) Subject to subsections (3) to (14), a physician, hospital, clinic, or other person that renders treatment or rehabilitative occupational training to an injured person for an accidental bodily injury covered by personal protection insurance is not eligible for payment or reimbursement under this chapter for more than the following:

(a) For treatment or training rendered after July 1, 2021 and before July 2, 2022, 200% of the amount payable to the person for the treatment or training under Medicare.

(b) For treatment or training rendered after July 1, 2022 and before July 2, 2023, 195% of the amount payable to the person for the treatment or training under Medicare.

(c) For treatment or training rendered after July 1, 2023, 190% of the amount payable to the person for the treatment or training under Medicare.

....

(7) If Medicare does not provide an amount payable for a treatment or rehabilitative occupational training under subsection (2), (3), (5), or (6), the physician, hospital, clinic, or other person that renders the treatment or training is not eligible for payment or reimbursement under this chapter of more than the following, as applicable:

(a) For a person to which subsection (2) applies, the applicable following percentage of the amount payable for the treatment or training under the person's charge description master in effect on January 1, 2019 or, if the person did not have a charge description master on that date, the applicable following percentage of the average amount the person charged for the treatment on January 1, 2019:

(i) For treatment or training rendered after July 1, 2021 and before July 2, 2022, 55%.

(ii) For treatment or training rendered after July 1, 2022 and before July 2, 2023, 54%.

(iii) For treatment or training rendered after July 1, 2023, 52.5%.



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47. The fee schedules set forth in §§ 3157(2) and (7) do not apply until July 1, 2021. However, these fee schedules will presumably apply to motor vehicle accident victims, like Ellen M. Andary and Philip Kruger, that were injured prior to June 11, 2019.

48. The fee schedules set forth in § 3157(7) will supposedly apply to any patients of Plaintiff Eisenhower Center, like Philip Krueger, that were injured prior to June 11, 2019 and were receiving reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation from Plaintiff Eisenhower Center prior to June 11, 2019. Presently, that number of patients is 130.

49. The fee schedules set forth in § 3157(7) that are applicable to non-Medicare compensable products, services, and accommodations are oppressive, confiscatory, and grossly inadequate and, as a result, those fee schedules pose a threat to the ability of many medical providers, who render products, services, and accommodations to motor vehicle accident victims, to remain in business.

50. For the most part, Plaintiff Eisenhower Center's services are not compensable under Medicare, as referenced in § 3157(2). Therefore, the fee schedules set forth in § 3157(7) dictate the amount that Plaintiff Eisenhower Center can be reimbursed for its services rendered to motor vehicle accident victims, such as Philip Krueger.

51. Beginning on July 1, 2021, for motor vehicle accident victims that receive reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation from Plaintiff Eisenhower, including Philip Krueger, Plaintiff Eisenhower Center will only be able to be reimbursed at 55% of the rate at which it charged for such products, services, and accommodations on January 1, 2019. Beginning on July 1, 2022,



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Eisenhower Center will only be able to be reimbursed at 54% of the rate at which it charged for such products, services, and accommodations on January 1, 2019. Beginning on July 1, 2023, Eisenhower Center will only be able to be reimbursed at 52.5% of the rate at which it charged for such products, services, and accommodations on January 1, 2019.

52. If the fee schedules set forth in § 3157(7) apply to the reasonably necessary products, services, and accommodations that Philip Krueger is receiving from Plaintiff Eisenhower Center and to all of Plaintiff Eisenhower Center's patients that are injured in motor vehicle accidents, there exists a substantial likelihood that Plaintiff Eisenhower Center will be unable to continue providing those reasonably necessary products, services, and accommodations to Philip Krueger and these other patients for the reason that the reimbursement rates set forth in the fee schedule contained in § 3157(7) are less than Plaintiff Eisenhower Center's cost of providing said care. Therefore, this creates an unsustainable situation regarding the ability of Plaintiff Eisenhower Center to survive as a viable business, and thus threatens and jeopardizes access to reasonably necessary products, services, and accommodations for the care, recovery, or rehabilitation of Philip Krueger and other motor vehicle accident patients.

53. The fee schedules contained in §§ 3157(2) and (7) will also purportedly apply to medical providers who are or will be providing reasonably necessary products, services, and accommodations for Ellen M. Andary's care, recovery, or rehabilitation.

54. If the fee schedules set forth in §§ 3157(2) and (7) apply to Ellen M. Andary's medical providers who are or will be providing reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation, her ability to continue



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receiving that care is at risk if the statutory reimbursement rates contained in those sections are deemed by her providers to be inadequate to enable them to continue caring for her.

55. If the aforementioned fee schedule provisions were to apply, Ellen M. Andary would be denied the full benefits of her insurance contract policy with Defendant USAA, which she and her husband, Michael T. Andary, M.D., purchased and which was in full force and effect on the date of her December 5, 2014 accident.

56. The Michigan Constitution prohibits laws that impair the obligation of contracts. Specifically, the Michigan Constitution states: "*No . . . law impairing the obligation of contract shall be enacted.*" Const 1963, art 1 § 10.

57. The Michigan Constitution contains a substantive due process protection that protects individuals from arbitrary exercise of governmental power. Specifically, the Michigan Constitution States, "*no person shall . . . be deprived of life, liberty, or property, without due process of law.*" Const 1963, art 1 § 17.

58. The Michigan Constitution contains an equal protection clause that protects similarly situated persons and entities from being treated dissimilarly. Specifically, the Michigan Constitution states: "*[n]o person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin.*" Const 1963, art 1 § 2.



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**COUNT I – APPLICATION OF THE ATTENDANT CARE LIMITATIONS SET FORTH
IN MCL 500.3157(10) TO ELLEN M. ANDARY VIOLATES HER CONSTITUTIONAL
CONTRACT RIGHTS UNDER ARTICLE 1 SECTION 10 OF THE MICHIGAN
CONSTITUTION**

59. Plaintiffs incorporate by reference paragraphs 1 - 58.

60. The attendant care limitations set forth in § 3157(10) limiting in-home family provided attendant care to 56 hours per week, operates as a substantial impairment of the contractual obligations owed to Ellen M. Andary pursuant to her aforementioned auto insurance policy with Defendant USAA. Ellen M. Andary's auto insurance policy with Defendant USAA, as of the date of her injury, did not contain any limitations on the identity of attendant care providers and allowed her to be reimbursed for in-home family provided attendant care that was rendered to her 24 hours per day, seven days per week, without regard to the identity of her caregivers, as long as such attendant care services were reasonably necessary for her care, recovery, or rehabilitation and that the charges were reasonable.

61. The premium paid by Ellen M. Andary and her husband, Michael T. Andary, M.D. for their aforesaid auto insurance policy with Defendant USAA was priced and sold based upon that fact that said policy entitled Ellen M. Andary to full in-home attendant care services without regard to the identity of the service provider. Ellen M. Andary's right to all reasonably necessary in-home family provided attendant care became vested on the date she was injured. Section 3157(10) divests her of that vested contract right, denies her the benefit of the premiums she and Michael T. Andary, M.D. paid to secure it, and, in the process, jeopardizes and diminishes her quality of care.



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62. The State of Michigan has no significant and legitimate public purpose behind the enactment of § 3157(10) to justify the retroactive interference with Ellen M. Andary's vested contractual right to uncapped in-home family provided attendant care between private parties, in that there is no credible evidence that in-home family provided attendant care is somehow fraudulent, or in some other way inappropriate. Moreover, there is no logical support for the proposition that forcing injured persons to hire in-home commercial attendant care agencies will bring down the cost of no-fault insurance.

63. The State of Michigan cannot divest Ellen M. Andary of contractual rights that vested at the time she was injured and cannot retroactively dictate the identity of her in-home attendant care providers. Moreover, the means the State of Michigan chose to alter the contractual rights between Ellen M. Andary and Defendant USAA are clearly unreasonable. In that regard, it is unreasonable for the State of Michigan to dramatically diminish the reimbursement for the in-home family provided attendant care that Ellen M. Andary has been receiving by two-thirds of that care, with no legitimate justification for such a dramatic alteration of her contractual rights.

64. For the reasons stated herein and otherwise, the in-home family provided attendant care limitations set forth in § 3157(10) violate Ellen M. Andary's constitutional contract rights under the Michigan Contracts Clause, Const 1963 Article 1 § 10.

WHEREFORE, Plaintiff Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., prays that this Court



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will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Ellen M. Andary, declaring the following:

- a. That the in-home family provided attendant care provisions of § 3157(10) are unconstitutional because they violate Article 1 § 10 of the Michigan Constitution.
- b. That Defendant USAA is prohibited from enforcing the provisions of § 3157(10) as to Plaintiff Ellen M. Andary.

COUNT II - APPLICATION OF THE ATTENDANT CARE LIMITATIONS SET FORTH IN MCL 500.3157(10) TO ELLEN M. ANDARY VIOLATES HER CONSTITUTIONAL DUE PROCESS RIGHTS UNDER ARTICLE 1 SECTION 17 OF THE MICHIGAN CONSTITUTION

65. Plaintiffs incorporate by reference paragraphs 1 - 64.
66. Ellen M. Andary, through her Guardian and Conservator Michael T. Andary, M.D., has a fundamental due process right, pursuant to the Michigan Constitution Article 1 § 17, to privacy and bodily integrity.
67. Ellen M. Andary, through her Guardian and Conservator Michael T. Andary, M.D., has a liberty interest, pursuant to the Michigan Constitution Article 1 § 17, in being able to choose the in-home caregivers that she or her Guardian selects, and who provide care that is most efficacious and beneficial for her.
68. The 56 hour per week in-home family provided attendant care limitation of § 3157(10) is a violation of Ellen M. Andary's fundamental right to privacy and bodily integrity, as it forces her to bring strangers into her home to provide her with very personal and intimate care, such as bathing, dressing, and assisting with using the bathroom. In addition, § 3157(10) is a violation of Ellen M. Andary's liberty interests, as



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it restricts her right to be able to choose the in-home caregivers that she or her Guardian selects, and who provide the care that is most efficacious and beneficial for her.

69. The State of Michigan has no compelling interest to infringe upon Ellen M. Andary's fundamental right to privacy and bodily integrity and her liberty interest in choosing her in-home caregivers by restricting her right to obtain reasonably necessary in-home family provided attendant care. Furthermore, the drastic limitations imposed by § 3157(10) regarding Ellen. M. Andary's ability to obtain in-home family provided attendant care are overbroad, overreaching, and not narrowly tailored.

70. For the reasons stated herein and otherwise, the in-home family provided attendant care limitations set forth in § 3157(10) violate Ellen M. Andary's constitutional substantive due process rights under the Michigan Due Process Clause, Const 1963 Article 1 § 17.

WHEREFORE, Plaintiff Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Ellen M. Andary, declaring the following:

- a. That the in-home family provided attendant care provisions of § 3157(10) are unconstitutional because they violate Article 1 § 17 of the Michigan Constitution.
- b. That Defendant USAA is prohibited from enforcing the provisions of § 3157(10) as to Plaintiff Ellen M. Andary.



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**COUNT III – APPLICATION OF THE ATTENDANT CARE LIMITATIONS SET FORTH
IN MCL 500.3157(10) TO ELLEN M. ANDARY VIOLATES HER CONSTITUTIONAL
EQUAL PROTECTION RIGHTS UNDER ARTICLE 1 SECTION 2 OF THE MICHIGAN
CONSTITUTION**

71. Plaintiffs incorporate by reference paragraphs 1 - 70.
72. Ellen M. Andary, through her Guardian and Conservator Michael T. Andary, M.D., has a fundamental equal protection right, pursuant to the Michigan Constitution Article 1 § 2, to privacy and bodily integrity.
73. Section 3157(10) creates two different classes of motor vehicle accident victims that require in-home attendant care: (a) persons that receive in-home family provided attendant care and, (b) persons that receive in-home commercial attendant care. Section 3157(10) discriminates against persons that receive in-home family provided attendant care, such as Ellen M. Andary, by putting a cap on the amount of reimbursement for such care at 56 hours per week, whereas persons who receive in-home commercial attendant care are not subject to any such limitation.
74. In creating the two classes referenced above, § 3157(10) treats similarly situated motor vehicle accident victims in a dissimilar manner, thereby imposing a substantial disadvantage upon motor vehicle accident victims who receive in-home family provided attendant care, such as Ellen M. Andary, who has in reality, benefitted more from the nature and extent of the in-home family provided attendant care she has been receiving since her discharge from the hospital.

75. The 56 hour per week in-home family provided attendant care limitation of § 3157(10) is a violation of Ellen M. Andary's fundamental right to privacy and bodily



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integrity, as it forces her to bring strangers into her home to provide her with very personal and intimate care, such as bathing, dressing, and assisting with using the bathroom. In addition, § 3157(10) violates Ellen M. Andary's liberty interests by restricting her right to be able to choose the in-home caregivers that she or her Guardian selects and who provide the care that is most efficacious and beneficial for her.

76. The State of Michigan has no compelling interest to infringe upon Ellen M. Andary's fundamental right to privacy and bodily integrity and no compelling interest to treat her more harshly than other similarly situated motor vehicle accident victims by restricting her right to receive reasonably necessary in-home family provided attendant care. Furthermore, the significant limitations imposed by § 3157(10) are overbroad, overreaching, and not narrowly tailored.

77. For the reasons stated herein and otherwise, the in-home family provided attendant care limitations set forth in § 3157(10) violate Ellen M. Andary's constitutional equal protection rights under the Michigan Equal Protection Clause, Const 1963 Article 1 § 2.

WHEREFORE, Plaintiff Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Ellen M. Andary, declaring the following:

- a. That the in-home family provided attendant care provisions of § 3157(10) are unconstitutional because they violate Article 1 § 2 of the Michigan Constitution.

b. That Defendant USAA is prohibited from enforcing the provisions of § 3157(10) as to Plaintiff Ellen M. Andary.

**COUNT IV – APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN
MCL 500.3157(7) TO ELLEN M. ANDARY VIOLATES HER CONSTITUTIONAL
CONTRACT RIGHTS UNDER ARTICLE 1 SECTION 10 OF THE MICHIGAN
CONSTITUTION**

78. Plaintiffs incorporate by reference paragraphs 1 - 77.

79. The fee schedules set forth in § 3157(7) limiting the amount Ellen M. Andary's providers can be reimbursed from Defendant USAA operate as a substantial impairment of the contractual obligations owed to Ellen M. Andary pursuant to her aforementioned auto insurance policy with Defendant USAA. Ellen M. Andary's auto insurance policy with Defendant USAA, as of the date of her injury, did not contain any such limitations on the reimbursement of her medical providers as long as such reimbursement was for reasonable charges for reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation.

80. The premium paid by Ellen M. Andary and her husband, Michael T. Andary, M.D. for their aforesaid auto insurance policy with Defendant USAA was priced and sold based upon the fact that said policy entitled Ellen M. Andary to reimbursement for all reasonable charges for all reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation. Ellen M. Andary's right to have her medical providers reimbursed for all reasonable charges for reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation became vested on the date she was injured. Section 3157(7) divests her of that vested contract



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right, denies her the benefit of the premiums she and Michael T. Andary, M.D. paid to secure it, and in the process, jeopardizes and diminishes her quality of care.

81. The State of Michigan has no significant and legitimate public purpose behind the enactment of § 3157(7) to justify the retroactive interference with Ellen M. Andary's vested contractual right to have her medical providers reimbursed without regard to any government or private fee schedules. Moreover, the means the State of Michigan chose to alter those contractual rights between Ellen M. Andary and Defendant USAA are clearly unreasonable. The State of Michigan cannot divest Ellen M. Andary of contractual rights that vested at the time she was injured and cannot dictate the amount her medical providers can be reimbursed to treat her, and such a divestment could jeopardize and diminish her quality of care.

82. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate Ellen M. Andary's constitutional contract rights under the Michigan Contracts Clause, Const 1963 Article 1 § 10.

WHEREFORE, Plaintiff Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Ellen M. Andary, declaring the following:

- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 10 of the Michigan Constitution.
- b. That Defendant USAA is prohibited from enforcing the provisions of § 3157(7) as to Plaintiff Ellen M. Andary.



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**COUNT V - APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN
MCL 500.3157(7) TO ELLEN M. ANDARY VIOLATES HER CONSTITUTIONAL
DUE PROCESS RIGHTS UNDER ARTICLE 1 SECTION 17 OF THE MICHIGAN
CONSTITUTION**

83. Plaintiffs incorporate by reference paragraphs 1 - 82.

84. Ellen M. Andary, through her Guardian and Conservator Michael T. Andary, M.D., has a fundamental due process right, pursuant to the Michigan Constitution Article 1 § 17, to privacy and bodily integrity.

85. Ellen M. Andary, through her Guardian and Conservator Michael T. Andary, M.D., has a liberty interest, pursuant to the Michigan Constitution Article 1 § 17, in being able to make personal medical decisions and in being free from governmental interference with the ability to access reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation by limiting the amount her providers can be reimbursed by her insurer under a private insurance contract.

86. The fee schedules set forth in § 3157(7) interfere with Ellen M. Andary's current patient-provider relationships and threaten the continuity of those relationships. Ellen M. Andary's fundamental right to privacy and bodily integrity and her liberty interest in her ability to access to reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation is threatened by the implementation of the aforementioned fee schedules.

87. The fee schedules set forth in § 3157(7) interfere with Ellen M. Andary's fundamental right to privacy and bodily integrity and liberty interest in her ability to access reasonably necessary products, services, and accommodations for her care,



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recovery, or rehabilitation. The reimbursement rates under the fee schedules set forth in § 3157(7) are unsustainable for many Michigan medical providers. Therefore, those providers will be unable or unwilling to treat Ellen M. Andary at such dramatically reduced reimbursement rates, thereby impairing her access to reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation.

88. The State of Michigan has no compelling interest to infringe upon Ellen M. Andary's fundamental right to privacy and bodily integrity and her liberty interest by the imposition of price fixing rules, applicable to private insurance contracts, that interfere with her ability to access reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation. Furthermore, the significant limitations imposed by § 3157(7) are overbroad, overreaching, and not narrowly tailored.

89. For the reasons stated herein and otherwise, the fee schedule limitations set forth in §§ 3157(2) and (7) violate Ellen M. Andary's constitutional substantive due process rights under the Michigan Due Process Clause, Const 1963 Article 1 § 17.

WHEREFORE, Plaintiff Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Ellen M. Andary, declaring the following:

- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 17 of the Michigan Constitution.
- b. That Defendant USAA is prohibited from enforcing the provisions of § 3157(7) as to Plaintiff Ellen M. Andary.



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**COUNT VI – APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN
MCL 500.3157(7) TO ELLEN M. ANDARY VIOLATES HER CONSTITUTIONAL
EQUAL PROTECTION RIGHTS UNDER ARTICLE 1 SECTION 2 OF THE MICHIGAN
CONSTITUTION**

90. Plaintiffs incorporate by reference paragraphs 1 - 89.
91. Ellen M. Andary, through her Guardian and Conservator Michael T. Andary, M.D., has a fundamental equal protection right, pursuant to the Michigan Constitution Article 1 § 2, to privacy and bodily integrity.
92. Sections 3157(2) and (7) create two different fee schedules that discriminate between motor vehicle accident victims that require reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation. The first of these classes consists of motor vehicle accident victims that require and receive reasonably necessary products, services, and accommodations that would be compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are reimbursed under § 3157(2) at a rate of 190% - 200% of the amount that is compensable by Medicare. The second of these classes consists of motor vehicle accident victims that require and receive reasonably necessary products, services, and accommodations that are not compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are reimbursed under § 3157(7) only at a rate of 52.5% - 55% of the amount these providers charged for those products, services, and accommodations on January 1, 2019. As such, the fee schedules under § 3157(7) reimburse a patient's providers at a substantially reduced rate in comparison to § 3157(2), thereby restricting the ability of patients, such as



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Ellen M. Andary, to access reasonably necessary products, services, and accommodations for her care, recovery, or rehabilitation.

93. In creating the two classes referenced above, §§ 3157(2) and (7) treat similarly situated motor vehicle accident victims in a dissimilar manner, thereby imposing a substantial disadvantage upon motor vehicle accident victims who receive reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation that are not compensable by Medicare, such as Ellen M. Andary. Stated differently, motor vehicle accident victims controlled by § 3157(7), such as Ellen M. Andary, become second class patients.

94. The State of Michigan has no compelling interest to infringe upon Ellen M. Andary's fundamental right to privacy and bodily integrity and no compelling interest to treat her more harshly than other similarly situated motor vehicle accident victims with respect to provider reimbursement rates for reasonably necessary products, services, and accommodations. Furthermore, the significant limitations imposed by § 3157(7) are overbroad, overreaching, and not narrowly tailored.

95. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate Ellen M. Andary's constitutional equal protection rights under the Michigan Equal Protection Clause, Const 1963 Article 1 § 2.

WHEREFORE, Plaintiff Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Ellen M. Andary, declaring the following:



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- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 2 of the Michigan Constitution.
- b. That Defendant USAA is prohibited from enforcing the provisions of § 3157(7) as to Plaintiff Ellen M. Andary.

**COUNT VII - APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN
MCL 500.3157(7) TO PHILIP KRUEGER FOR TREATMENT RENDERED TO HIM BY
PLAINTIFF EISENHOWER CENTER VIOLATES HIS CONSTITUTIONAL CONTRACT
RIGHTS UNDER ARTICLE 1 SECTION 10 OF THE MICHIGAN CONSTITUTION**

96. Plaintiffs incorporate by reference paragraphs 1 - 95.

97. The fee schedules set forth in § 3157(7) limiting the amount Philip Krueger's provider, Plaintiff Eisenhower Center, can be reimbursed from Defendant Citizens operate as a substantial impairment of the contractual obligations owed to Philip Krueger pursuant to his aforementioned auto insurance policy with Defendant Citizens. Philip Krueger's auto insurance policy with Defendant Citizens, as of the date of his injury, did not contain any such limitations on the reimbursement of his medical providers as long as such reimbursement was for reasonable charges for reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation.

98. The premium paid on behalf of Philip Krueger for his aforesaid auto insurance policy with Defendant Citizens was priced and sold based upon the fact that said policy entitled him to reimbursement for all reasonable charges for reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation. Philip Krueger's right to have his medical provider, Plaintiff Eisenhower Center, reimbursed for all for reasonable charges for reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation became vested on



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the date he was injured. Section 3157(7) divests him of that vested contract right, denies him the benefit of the premiums paid on his behalf to secure it, and in the process, jeopardizes and diminishes his quality of care.

99. The State of Michigan has no significant and legitimate public purpose behind the enactment of § 3157(7) to justify the retroactive interference with Philip Krueger's vested contractual right to have his medical provider, Plaintiff Eisenhower Center, reimbursed without regard to any government or private fee schedules. Moreover, the means the State of Michigan chose to alter the contractual rights between Philip Krueger and Defendant Citizens are clearly unreasonable. The State of Michigan cannot divest Philip Krueger of contractual rights that vested at the time he was injured and cannot dictate the amount his medical providers can be reimbursed to treat him, and such a divestment could jeopardize and diminish his quality of care.

100. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violates Philip Krueger's constitutional contract rights under the Michigan Contracts Clause, Const 1963 Article 1 § 10.

WHEREFORE, Plaintiff Philip Krueger, a legally incapacitated adult, by and through his Guardian, Ronald Krueger, prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Philip Krueger, declaring the following:

- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 10 of the Michigan Constitution.
- b. That Defendant Citizens is prohibited from enforcing the provisions of § 3157(7) as to Plaintiff Philip Krueger for reasonably necessary



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products, services, and accommodation for his care, recovery, or rehabilitation rendered to him by Plaintiff Eisenhower Center.

**COUNT VIII – APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH
IN MCL 500.3157(7) TO PHILIP KRUEGER FOR TREATMENT RENDERED TO HIM
BY PLAINTIFF EISENHOWER CENTER VIOLATES HIS CONSTITUTIONAL DUE
PROCESS RIGHTS UNDER ARTICLE 1 SECTION 17 OF THE MICHIGAN
CONSTITUTION**

101. Plaintiffs incorporate by reference paragraphs 1 - 100.

102. Philip Krueger, through his Guardian Ronald Krueger, has a fundamental due process right, pursuant to the Michigan Constitution Article 1 § 17, to privacy and bodily integrity.

103. Philip Krueger, through his Guardian Ronald Krueger, has a liberty interest, pursuant to the Michigan Constitution Article 1 § 17, in being able to make personal medical decisions and in being free from governmental interference with his ability to access reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation by limiting the amount his providers, such as Plaintiff Eisenhower Center, can be reimbursed by his insurer under a private insurance contract.

104. The fee schedules set forth in § 3157(7) interfere with Philip Krueger's fundamental right to privacy and bodily integrity and liberty interest in his ability to access reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation. The reimbursement rates under the fee schedules set forth in § 3157(7) are unsustainable for Plaintiff Eisenhower Center. Therefore, Plaintiff Eisenhower Center will be unable or unwilling to treat Philip Krueger at such dramatically reduced reimbursement rates, thereby impairing his access to reasonably



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necessary products, services, and accommodations for his care, recovery, or rehabilitation.

105. The fee schedules set forth in § 3157(7) interfere with Philip Krueger's current patient-provider relationship with Plaintiff Eisenhower Center, and threaten the continuity of this relationship. Philip Krueger's fundamental right to privacy and bodily integrity and his liberty interest in his ability to access reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation with a medical provider that he has been seeing since 1997 is threatened by the implementation of the aforementioned fee schedules.

106. The State of Michigan has no compelling interest to infringe upon Philip Krueger's fundamental right to privacy and bodily integrity and his liberty interest by the imposition of price fixing rules, applicable to private insurance contracts, that interfere with his ability to access reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation. Furthermore, the significant limitations imposed by § 3157(7) are overbroad, overreaching, and not narrowly tailored.

107. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate Philip Krueger's constitutional substantive due process rights under the Michigan Due Process Clause, Const 1963 Article 1 § 17.

WHEREFORE, Plaintiff Philip Krueger, a legally incapacitated adult, by and through his Guardian, Ronald Krueger, prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Philip Krueger, declaring the following:



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- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 17 of the Michigan Constitution.
- b. That Defendant Citizens is prohibited from enforcing the provisions of § 3157(7) as to Plaintiff Philip Krueger for treatment rendered to him by Plaintiff Eisenhower Center.

**COUNT IX – APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN
MCL 500.3157(7) TO PHILIP KRUEGER VIOLATES HIS CONSTITUTIONAL EQUAL
PROTECTION RIGHTS UNDER ARTICLE 1 SECTION 2 OF THE MICHIGAN
CONSTITUTION**

108. Plaintiffs incorporate by reference paragraphs 1 - 107.

109. Philip Krueger, through his Guardian Ronald Krueger, has a fundamental equal protection right, pursuant to the Michigan Constitution Article 1 § 2, to privacy and bodily integrity.

110. Sections 3157(2) and (7) create two different fee schedules that discriminate between motor vehicle accident victims that require reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation. The first of these classes consists of motor vehicle accident victims that require and receive reasonably necessary products, services, and accommodations that would be compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are reimbursed under § 3157(2) at a rate of 190% - 200% of the amount that is compensable by Medicare. The second of these classes consists of motor vehicle accident victims that require and receive reasonably necessary products, services, and accommodations that are not compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are



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reimbursed under § 3157(7) only at a rate of 52.5% - 55% of the amount these providers charged for those products, services, and accommodations on January 1, 2019. As such, the fee schedules under § 3157(7) reimburse a patient's providers at a substantially reduced rate in comparison to § 3157(2), thereby restricting the ability of patients, such as Philip Krueger, to access reasonably necessary products, services, and accommodations for his care, recovery, or rehabilitation.

111. In creating the two classes referenced above, §§ 3157(2) and (7) treat similarly situated motor vehicle accident victims in a dissimilar manner, thereby imposing a substantial disadvantage upon motor vehicle accident victims who receive reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation that are not compensable by Medicare, such as Philip Krueger. Stated differently, motor vehicle accident victims controlled by § 3157(7), such as Philip Krueger, become second class patients.

112. The State of Michigan has no compelling interest to infringe upon Philip Krueger's fundamental right to privacy and bodily integrity and no compelling interest to treat him more harshly than other similarly situated motor vehicle accident victims with respect to provider reimbursement rates for reasonably necessary products, services, and accommodations. Furthermore, the significant limitations imposed by § 3157(7) are overbroad, overreaching, and not narrowly tailored.

113. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate Philip Krueger's constitutional equal protection rights under the Michigan Equal Protection Clause, Const 1963 Article 1 § 2.



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WHEREFORE, Plaintiff Philip Krueger, a legally incapacitated adult, by and through his Guardian, Ronald Krueger, prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Philip Krueger, declaring the following:

- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 2 of the Michigan Constitution.
- b. That Defendant Citizens is prohibited from enforcing the provisions of § 3157(7) as to Plaintiff Philip Krueger.

**COUNT X - APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN
MCL 500.3157(7) TO PLAINTIFF EISENHOWER CENTER FOR SERVICES IT
RENDERS TO PLAINTIFF PHILIP KRUEGER VIOLATES ITS CONSTITUTIONAL
CONTRACT RIGHTS UNDER ARTICLE 1 SECTION 10 OF THE MICHIGAN
CONSTITUTION**

114. Plaintiffs incorporate by reference paragraphs 1 - 113.

115. The fee schedules set forth in § 3157(7) limiting the amount that Plaintiff Eisenhower Center can be reimbursed from Defendant Citizens for reasonably necessary products, services, and accommodations it renders for the care, recovery, or rehabilitation of Philip Krueger operate as a substantial impairment of the contractual relationship between Plaintiff Eisenhower Center and Philip Krueger. In that regard, § 3157(7) prevents Plaintiff Eisenhower Center from being reimbursed for reasonably necessary products, services, and accommodations it renders for the care, recovery, or rehabilitation of Philip Krueger greater than 52.5% - 55% of the rate it charged for such products, services, and accommodations on January 1, 2019. The contract between Plaintiff Eisenhower Center and Philip Krueger, as of the date Philip Krueger began receiving



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products, services, and accommodations from Plaintiff Eisenhower Center, did not contain any such limitations on the reimbursement of Plaintiff Eisenhower Center as long as such reimbursement was for reasonable charges for reasonably necessary products, services, and accommodations it rendered for the care, recovery, or rehabilitation of Philip Krueger.

116. The State of Michigan has no significant and legitimate public purpose behind the enactment of § 3157(7) to justify the retroactive interference with Plaintiff Eisenhower Center's vested contractual right to be reimbursed for all reasonable charges for reasonably necessary products, services, and accommodations it renders for the care, recovery, or rehabilitation of Philip Krueger.

117. The means the State of Michigan chose to alter the contractual rights between Plaintiff Eisenhower Center and Philip Krueger are clearly unreasonable. The fee schedules set forth in § 3157(7) dramatically reduce the amount Plaintiff Eisenhower Center can be reimbursed for the reasonably necessary products, services, and accommodations it renders to Philip Krueger to a level not to exceed 52.5% - 55% of the rate at which it rendered such products, services, and accommodations on January 1, 2019, with no legitimate reasoning for such a dramatic reduction.

118. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate Plaintiff Eisenhower Center's constitutional contract rights under the Michigan Contracts Clause, Const 1963 Article 1 § 10.



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WHEREFORE, Plaintiff Eisenhower Center prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Eisenhower Center, declaring the following:

- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 10 of the Michigan Constitution.
- b. That Defendant Citizens is prohibited from enforcing the provisions of § 3157(7) as to Plaintiff Eisenhower Center for reasonably necessary products, services, and accommodations it renders for the care, recovery, or rehabilitation of Philip Krueger.

**COUNT XI - APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN
MCL 500.3157(7) TO PLAINTIFF EISENHOWER CENTER REGARDING SERVICES
IT RENDERS TO ALL MOTOR VEHICLE ACCIDENT VICTIMS PAST, PRESENT, OR
FUTURE, VIOLATES ITS CONSTITUTIONAL DUE PROCESS RIGHTS UNDER
ARTICLE 1 SECTION 17 OF THE MICHIGAN CONSTITUTION**

119. Plaintiffs incorporate by reference paragraphs 1 – 118.

120. Plaintiff Eisenhower Center has a property interest, pursuant to the Michigan Constitution Article 1 § 17, in the survival of its business and the perpetuation of its financial operations without government interference in the form of oppressive price control legislation that threatens the survivability of Plaintiff Eisenhower Center.

121. The fee schedules set forth in § 3157(7) violate Plaintiff Eisenhower Center's property rights by dramatically and unreasonably reducing the amount Plaintiff Eisenhower Center can be reimbursed for providing reasonably necessary products, services, and accommodations for care, recovery, or rehabilitation to all motor vehicle accident victims, past, present, or future, including, but not limited to, Philip Krueger, under the provisions of the No-Fault Act. In that regard, § 3157(7) prevents Plaintiff



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Eisenhower Center from being reimbursed more than 52.5% - 55% of the rate Plaintiff Eisenhower Center charged for those products, services, and accommodations on January 1, 2019.

122. Plaintiff Eisenhower Center's ability to stay in business at such patently unreasonable reimbursement rates is effectively destroyed by § 3157(7). As such, Plaintiff Eisenhower Center will be unable to provide reasonably necessary products, services, and accommodations for care, recovery, or rehabilitation to all motor vehicle accident victims, past, present, or future, including, but not limited to, Philip Krueger, at the confiscatory and unconscionable reimbursement rates set forth by § 3157(7).

123. Accordingly, § 3157(7) violates Plaintiff Eisenhower Center's substantive due process rights by taking away Plaintiff Eisenhower Center's property and rendering it unable to continue its business of providing reasonably necessary products, services, and accommodations for care, recovery, or rehabilitation of all motor vehicle accident victims, past, present, or future, including, but not limited to, Philip Krueger.

124. The infringement upon Plaintiff Eisenhower Center's substantive due process rights is particularly egregious given the fact that the government's enactment of the Michigan No-Fault Act in 1973 codified and embraced the clear public policy that motor vehicle accident victims, such as Philip Krueger, should have uncapped lifetime care for all reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation. In enacting that law, the State of Michigan fostered and encouraged the birth and development of a significant sector of the Michigan health care industry. People and businesses throughout Michigan invested substantial funds and



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resources in order to create specialized medical treatment facilities to serve the population of catastrophically injured motor vehicle accident victims that the State had decreed should be fully served under the No-Fault Act. The enactment of the fee schedules set forth in § 3157(7) has sabotaged that sector of Michigan's health care industry which the State of Michigan encouraged to be developed and will likely destroy the substantial financial investment that providers, like Plaintiff Eisenhower Center, have made in their businesses.

125. The limitations imposed by § 3157(7) are overbroad, overreaching, and not rationally related to any legitimate government purpose.

126. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate Plaintiff Eisenhower Center's constitutional substantive due process rights under the Due Process Clause, Const 1963 Article 1 § 17, with regard to reasonably necessary products, services, and accommodations for care, recovery, or rehabilitation it renders to all motor vehicle accident victims, past, present, or future, including, but not limited to, Philip Krueger.

WHEREFORE, Plaintiff Eisenhower Center prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Eisenhower Center, declaring the following:

- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 17 of the Michigan Constitution.
- b. That Defendant Citizens is prohibited from enforcing the provisions of § 3157(7) as to Plaintiff Eisenhower Center.



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**COUNT XII - APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN
MCL 500.3157(7) TO PLAINTIFF EISENHOWER CENTER REGARDING SERVICES
IT RENDERS TO ALL MOTOR VEHICLE ACCIDENT VICTIMS PAST, PRESENT, OR
FUTURE VIOLATES ITS CONSTITUTIONAL EQUAL PROTECTION RIGHTS UNDER
ARTICLE 1 SECTION 2 OF THE MICHIGAN CONSTITUTION**

127. Plaintiffs incorporate by reference paragraphs 1 – 126.

128. Sections 3157(2) and (7) create two different fee schedules that discriminate between Michigan medical providers that render reasonably necessary products, services, and accommodations for the care, recovery, or rehabilitation of motor vehicle accident victims. The first of these classes consists of Michigan medical providers that render reasonably necessary products, services, and accommodations that would be compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are reimbursed under § 3157(2) at a rate of 190% - 200% of the amount that is compensable by Medicare. The second of these classes consists of Michigan medical providers that render reasonably necessary products, services, and accommodations that are not compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are reimbursed under § 3157(7) only at a rate of 52.5% - 55% of the amount these providers charged for those products, services, and accommodations on January 1, 2019. As such, the fee schedules under § 3157(7) reimburse Michigan medical providers at a substantially reduced rate in comparison to § 3157(2).

129. In creating the two classes referenced above, §§ 3157(2) and (7) treat similarly situated Michigan medical providers in a dissimilar manner, thereby imposing



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a substantial disadvantage upon Michigan medical providers that render reasonably necessary products, services, and accommodations for the care, recovery, or rehabilitation of motor vehicle accident victims that are not compensable by Medicare, such as Plaintiff Eisenhower Center.

130. The State of Michigan has no rational basis for treating Plaintiff Eisenhower Center more harshly than other medical providers that render reasonably necessary products, services, and accommodations that are compensable by Medicare. Furthermore, the significant limitations imposed by § 3157(7) are overbroad, overreaching, and not rationally related to any legitimate government purpose.

131. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate Plaintiff Eisenhower Center's constitutional equal protection rights under the Equal Protection Clause, Const 1963 Article 1 § 2.

WHEREFORE, Plaintiff Eisenhower Center prays that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiff Eisenhower Center, declaring the following:

- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 2 of the Michigan Constitution.
- b. That Defendant Citizens is prohibited from enforcing the provisions of § 3157(7) as to Plaintiff Eisenhower Center.



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**COUNT XIII – FUTURE APPLICATION OF THE ATTENDANT CARE LIMITATIONS
SET FORTH IN MCL 500.3157(10) TO ALL MOTOR VEHICLE ACCIDENT VICTIMS
PAST, PRESENT, OR FUTURE, VIOLATES THE CONSTITUTIONAL DUE PROCESS
RIGHTS OF THOSE PERSONS UNDER ARTICLE 1 SECTION 17 OF THE MICHIGAN
CONSTITUTION**

132. Plaintiffs incorporate by reference paragraphs 1 – 131.

133. Pursuant to MCR 2.605, Plaintiffs in the case have standing to bring this declaratory judgment action on behalf of all motor vehicle accident victims, past, present, or future, alleging that § 3157(10) is unconstitutional as applied to all motor vehicle accident victims, past, present, or future, for the reason that the § 3157(10) limitations on in-home family provided attendant care involve an actual controversy that, if not immediately resolved, present the threat of imminent harm to any Michigan citizens seriously injured in a motor vehicle accident.

134. All Michigan citizens, including motor vehicle accident victims, past, present, or future, have a fundamental due process right, pursuant to the Michigan Constitution Article 1 § 17, to privacy and bodily integrity.

135. All Michigan citizens, including motor vehicle accident victims, past, present, or future, have a liberty interest, pursuant to the Michigan Constitution Article 1 § 17, in being able to select the in-home caregivers that are most appropriate for their individual needs and in being able to choose the in-home caregivers that provide the care that is most efficacious and beneficial for them.

136. The 56 hour per week in-home family provided attendant care limitation of § 3157(10) is a violation of the fundamental right to privacy and bodily integrity of all



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seriously injured motor vehicle accident victims, past, present, or future as it forces them to bring strangers into their homes to provide them with very personal and intimate care, such as bathing, dressing, and assisting with using the bathroom. In addition, § 3157(10) is a violation of the liberty interests of all seriously injured motor vehicle accident victims, past, present, or future, as it restricts their right to be able to choose the in-home caregivers that they select, and who provide the care that is most efficacious and beneficial for them.

137. The State of Michigan has no compelling interest to infringe upon the fundamental right to privacy and bodily integrity of all seriously injured motor vehicle accident victims, past present, and future by restricting their right to obtain reasonably necessary in-home family provided attendant care. Furthermore, the drastic limitations imposed by § 3157(10) regarding the ability of all motor vehicle accident victims, past, present, and future, to obtain in-home family provided attendant care are overbroad, overreaching, and not narrowly tailored.

138. For the reasons stated herein and otherwise, the in-home family provided attendant care limitations set forth in § 3157(10) violate the constitutional substantive due process rights of all motor vehicle accident victims, past, present, or future, under the Due Process Clause, Const 1963 Article 1 § 17.

WHEREFORE, Plaintiff Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., Plaintiff Philip Krueger, a legally incapacitated adult, by and through his Guardian Ronald Krueger, and



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Plaintiff Eisenhower Center pray that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiffs, declaring the following:

- a. That the in-home family provided attendant care provisions of § 3157(10) are unconstitutional because they violate Article 1 § 17 of the Michigan Constitution.
- b. That Defendant USAA and Defendant Citizens are prohibited from enforcing the provisions of § 3157(10) as to all motor vehicle accident victims, past, present, or future.

**COUNT XIV – FUTURE APPLICATION OF THE ATTENDANT CARE LIMITATIONS
SET FORTH IN MCL 500.3157(10) TO ALL MOTOR VEHICLE ACCIDENT VICTIMS
PAST, PRESENT, OR FUTURE, VIOLATES THE CONSTITUTIONAL EQUAL
PROTECTION RIGHTS OF THOSE PERSONS UNDER ARTICLE 1 SECTION 2 OF THE
MICHIGAN CONSTITUTION**

139. Plaintiffs incorporate by reference paragraphs 1 – 138.

140. Pursuant to MCR 2.605, Plaintiffs in the case have standing to bring this declaratory judgment action on behalf of all motor vehicle accident victims, past, present, or future, alleging that § 3157(10) is unconstitutional as applied to all motor vehicle accident victims, past, present, or future, for the reason that the § 3157(10) limitations on in-home family provided attendant care involve an actual controversy that, if not immediately resolved, presents the threat of imminent harm to any Michigan citizens seriously injured in a motor vehicle accident.

141. All Michigan citizens, including motor vehicle accident victims, past, present, or future, have a fundamental equal protection right, pursuant to the Michigan Constitution Article 1 § 2, to privacy and bodily integrity.



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142. Section 3157(10) creates two different classes of motor vehicle accident victims that require in-home attendant care: (a) persons that receive in-home family provided attendant care and, (b) persons that receive in-home commercial attendant care. Section 3157(10) discriminates against persons that receive in-home family provided attendant by putting a cap on the amount of reimbursement for such care at 56 hours per week, whereas persons who receive in-home commercial attendant care are not subject to any such limitation.

143. In creating the two classes referenced above, § 3157(10) treats similarly situated motor vehicle accident victims in a dissimilar manner, thereby imposing a substantial disadvantage upon motor vehicle accident victims who receive in-home family provided attendant care.

144. The 56 hour per week in-home family provided attendant care limitation of § 3157(10) is a violation of the fundamental right to privacy and bodily integrity of all seriously injured motor vehicle accident victims, past, present, or future, as it forces them to bring strangers into their homes to provide them with very personal and intimate care, such as bathing, dressing, and assisting with using the bathroom. In addition, § 3157(10) violates the liberty interests of all seriously injured motor vehicle accident victims, past, present, or future by restricting their right to be able to choose the in-home caregivers that they select and who provide the care that is most efficacious and beneficial for them.

145. The State of Michigan has no compelling interest to infringe the fundamental right to privacy and bodily integrity of all seriously injured motor vehicle accident victims past, present, or future that receive in-home family provided attendant



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care, and no compelling interest to treat them dissimilarly than other similarly situated seriously injured motor vehicle accident victims by restricting their right to obtain reasonably necessary in-home family provided attendant care. Furthermore, the drastic limitations imposed by § 3157(10) regarding the ability of all seriously injured motor vehicle accident victims, past, present, and future, to obtain in-home family provided attendant care are overbroad, overreaching, and not narrowly tailored.

146. For the reasons stated herein and otherwise, the in-home family provided attendant care limitations set forth in § 3157(10) violate the constitutional equal protection rights of all motor vehicle accident victims, past, present, or future under the Michigan Equal Protection Clause, Const 1963 Article 1 § 2.

WHEREFORE, Plaintiff Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., Plaintiff Philip Krueger, a legally incapacitated adult, by and through his Guardian Ronald Krueger, and Plaintiff Eisenhower Center pray that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiffs, declaring the following:

- a. That the in-home family provided attendant care provisions of § 3157(10) are unconstitutional because they violate Article 1 § 2 of the Michigan Constitution.
- b. That Defendant USAA and Defendant Citizens are prohibited from enforcing the provisions of § 3157(10) as to all motor vehicle accident victims, past, present, or future.



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COUNT XV - FUTURE APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN MCL 500.3157(7) TO ALL MOTOR VEHICLE ACCIDENT VICTIMS, PAST, PRESENT, OR FUTURE, VIOLATES THE CONSTITUTIONAL DUE PROCESS RIGHTS OF THOSE PERSONS UNDER ARTICLE 1 SECTION 17 OF THE MICHIGAN CONSTITUTION

147. Plaintiffs incorporate by reference paragraphs 1 – 146.

148. Pursuant to MCR 2.605, Plaintiffs in the case have standing to bring this declaratory judgment action on behalf of all motor vehicle accident victims, past, present, or future, alleging that § 3157(7) is unconstitutional as applied to all motor vehicle accident victims, past, present, or future, for the reason that the fee schedules set forth in § 3157(7) involve an actual controversy that, if not immediately resolved, present the threat of imminent injury to any Michigan citizens involved in a motor vehicle accident.

149. All Michigan citizens, including motor vehicle accident victims, past, present, or future, have a fundamental due process right to privacy and bodily integrity, pursuant to the Michigan Constitution Article 1 § 17.

150. All Michigan citizens, including motor vehicle accident victims, past, present, or future, have a liberty interest, pursuant to the Michigan Constitution Article 1 § 17, in being free from governmental interference with the ability to access reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation, by limiting the amount their providers can be reimbursed by their insurers under a private insurance contract.

151. The fee schedules set forth in § 3157(7) interfere with the patient-provider relationships of all motor vehicle accident victims, past, present, or future. The



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fundamental right to privacy and bodily integrity and liberty interests of all motor vehicle accident victims, past, present, or future, in their ability to access reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation is threatened by the implementation of the aforementioned fee schedules. The reimbursement rates under the fee schedules set forth in § 3157(7) are unsustainable for many Michigan medical providers. Therefore, those providers will be unable or unwilling to treat motor vehicle accident victims at such dramatically reduced reimbursement rates, thereby impairing their access to reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation.

152. The State of Michigan has no compelling interest to infringe upon the fundamental right to privacy and bodily integrity and the liberty interests of all motor vehicle accident victims, past, present, or future, by the imposition of price fixing rules, applicable to private contracts, that interfere with the ability to access reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation. Furthermore, the significant limitations imposed by § 3157(7) are overbroad, overreaching, and not narrowly tailored.

153. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate the constitutional substantive due process rights of all motor vehicle accident victims, past, present, or future, under the Due Process Clause, Const 1963 Article 1 § 17.

WHEREFORE, Plaintiff, Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., and Plaintiff Philip



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Krueger, a legally incapacitated adult, by and through his Guardian, Ronald Krueger, and Plaintiff Eisenhower Center pray that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiffs, declaring the following:

- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 17 of the Michigan Constitution.
- b. That Defendant USAA and Defendant Citizens are prohibited from enforcing the provisions of § 3157(7) as to all motor vehicle accident victims, past, present, or future.

COUNT XVI - FUTURE APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN MCL 500.3157(7) TO ALL MOTOR VEHICLE ACCIDENT VICTIMS PAST, PRESENT, OR FUTURE, VIOLATES THE CONSTITUTIONAL EQUAL PROTECTION RIGHTS OF THOSE PERSONS UNDER ARTICLE 1 SECTION 2 OF THE MICHIGAN CONSTITUTION

154. Plaintiffs incorporate by reference paragraphs 1 – 153.

155. Pursuant to MCR 2.605, Plaintiffs in the case have standing to bring this declaratory judgment action on behalf of any such all motor vehicle accident victims, past, present, or future, alleging that § 3157(7) is unconstitutional as applied to all motor vehicle accident victims, past, present, or future, for the reason that the fee schedules set forth in § 3157(7) involve an actual controversy that, if not immediately resolved, present the threat of imminent injury to any Michigan citizens involved in a motor vehicle accident.

156. All Michigan citizens, including motor vehicle accident victims, past, present, or future, have a fundamental equal protection right to privacy and bodily integrity pursuant to the Michigan Constitution Article 1 § 2.



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157. Sections 3157(2) and (7) create two different fee schedules that discriminate between motor vehicle accident victims who require reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation. The first of these classes consists of motor vehicle accident victims that require and receive reasonably necessary products, services, and accommodations that would be compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are reimbursed under § 3157(2) at a rate of 190% - 200% of the amount that is compensable by Medicare. The second of these classes consists of motor vehicle accident victims that require and receive reasonably necessary products, services, and accommodations that are not compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are reimbursed under § 3157(7) only at a rate of 52.5% - 55% of the amount these providers charged for those products, services, and accommodations on January 1, 2019. As such, the fee schedules under § 3157(7) reimburse a patient's providers at a substantially reduced rate in comparison to § 3157(2), thereby restricting the ability of patients to access reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation.

158. In creating the two classes referenced above, §§ 3157(2) and (7) treat similarly situated motor vehicle accident victims in a dissimilar manner, thereby imposing a substantial disadvantage upon all motor vehicle accident victims, past, present, or future, who receive reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation that are not compensable by

Medicare. Stated differently, motor vehicle accident victims controlled by § 3157(7) become second class patients.

159. The State of Michigan has no compelling interest to infringe upon the fundamental right to privacy and bodily integrity of all motor vehicle accident victims, past, present, or future, who receive reasonably necessary products, services, and accommodations for their care, recovery, or rehabilitation that are not compensable by Medicare and no compelling interest to treat these motor vehicle accident victims more harshly than other similarly motor vehicle accident victims with respect to provider reimbursement rates for reasonably necessary products, services, and accommodations. Furthermore, the significant limitations imposed by § 3157(7) are overbroad, overreaching, and not narrowly tailored.

160. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate the constitutional equal protection rights of all motor vehicle accident victims, past, present, or future, under the Equal Protection Clause, Const 1963 Article 1 § 2.

WHEREFORE, Plaintiff, Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., and Plaintiff Philip Krueger, a legally incapacitated adult, by and through his Guardian, Ronald Krueger, and Plaintiff Eisenhower Center pray that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiffs, declaring the following:

- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 2 of the Michigan Constitution.



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b. That Defendant USAA and Defendant Citizens are prohibited from enforcing the provisions of § 3157(7) as to all motor vehicle accident victims, past, present, or future.

COUNT XVII - FUTURE APPLICATION OF THE FEE SCHEDULE LIMITATIONS SET FORTH IN MCL 500.3157(7) TO ANY MICHIGAN MEDICAL PROVIDER VIOLATES THE CONSTITUTIONAL DUE PROCESS RIGHTS OF THOSE PROVIDERS UNDER ARTICLE 1 SECTION 17 OF THE MICHIGAN CONSTITUTION

161. Plaintiffs incorporate by reference paragraphs 1 – 160.

162. Pursuant to MCR 2.605, Plaintiffs in this case have standing to bring this declaratory judgment action on behalf of all Michigan medical providers who treat motor vehicle accident victims in this State, alleging that § 3157(7) is unconstitutional as applied to such Michigan medical providers for the reason that the fee schedules set forth in § 3157(7) involve an actual controversy that, if not immediately resolved, present the threat of imminent injury to all Michigan medical providers that treat motor vehicle accident victims.

163. All Michigan medical providers that render reasonably necessary products, services, and accommodations for the care, recovery, or rehabilitation of motor vehicle accident victims have a property interest, pursuant to the Michigan Constitution Article 1 § 17, in the survival of their business and the perpetuation of their financial operations without government interference in the form of oppressive price control legislation that threatens the survivability of those businesses.

164. The fee schedules set forth in § 3157(7) violate the property rights of all Michigan medical providers that render products, services, and accommodations for the care, recovery, or rehabilitation of motor vehicle accident victims by dramatically and



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unreasonably reducing the amount they can be reimbursed for providing such products, services, and accommodations that are payable to motor vehicle accident victims under the provisions of the No-Fault Act. In that regard, § 3157(7) prevents all Michigan medical providers from being reimbursed more than 52.5% - 55% of the rate at which these providers charged for such products, services, and accommodations on January 1, 2019.

165. The ability of Michigan medical providers to stay in business at such patently unreasonable reimbursement rates is effectively destroyed by § 3157(7). As such, those medical providers will be unable to provide reasonably necessary products, services, and accommodations for the care, recovery, or rehabilitation to motor vehicle accident victims at the confiscatory and unconscionable reimbursement rates set forth by § 3157(7).

166. Accordingly, § 3157(7) violates the substantive due process rights of all Michigan medical providers that treat motor vehicle accident victims by taking away their property and rendering them unable to continue their business of providing reasonably necessary products, services, and accommodations for the care, recovery, and rehabilitation of motor vehicle accident victims.

167. The infringement upon the substantive due process rights of these Michigan medical providers is particularly egregious given the fact that the government's enactment of the Michigan No-Fault Act in 1973 codified and embraced the clear public policy that motor vehicle accident victims should have uncapped lifetime care for all reasonably necessary products, services, and accommodations for their care, recovery, or



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rehabilitation. In enacting that law, the State of Michigan fostered and encouraged the birth and development of a significant sector of the Michigan health care industry. People and businesses throughout Michigan invested substantial funds and resources in order to create specialized medical treatment facilities to serve the population of catastrophically injured motor vehicle accident victims that the State had decreed should be fully served under the No-Fault Act. The enactment of the fee schedules set forth in § 3157(7) has sabotaged that sector of Michigan's health care industry which the State of Michigan encouraged to be developed and will likely destroy the substantial financial investment that Michigan medical providers have made in their businesses.

168. The limitations imposed by § 3157(7) are overbroad, overreaching, and not rationally related to any legitimate government purpose.

169. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate the constitutional substantive due process rights of Michigan medical providers under the Due Process Clause, Const 1963 Article 1 § 17, with regard to reasonably necessary products, services, and accommodations for care, recovery, or rehabilitation they render to motor vehicle accident victims.

WHEREFORE, Plaintiff, Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., and Plaintiff Philip Krueger, a legally incapacitated adult, by and through his Guardian, Ronald Krueger, and Plaintiff Eisenhower Center pray that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiffs, declaring the following:



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- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 17 of the Michigan Constitution.
- b. That Defendant USAA and Defendant Citizens are prohibited from enforcing the provisions of § 3157(7) as to any Michigan medical provider.

**COUNT XVIII – FUTURE APPLICATION OF THE FEE SCHEDULE LIMITATIONS
SET FORTH IN MCL 500.3157(7) TO ANY MICHIGAN MEDICAL PROVIDER
VIOLATES THE CONSTITUTIONAL EQUAL PROTECTION RIGHTS OF THOSE
PROVIDERS UNDER ARTICLE 1 SECTION 2 OF THE MICHIGAN CONSTITUTION**

170. Plaintiffs incorporate by reference paragraphs 1 – 169.

171. Pursuant to MCR 2.605, Plaintiffs in this case have standing to bring this declaratory judgment action on behalf of all Michigan medical providers who treat motor vehicle accident victims in this State, alleging that § 3157(7) is unconstitutional as applied to such Michigan medical providers for the reason that the fee schedules set forth in § 3157(7) involve an actual controversy that, if not immediately resolved, present the threat of imminent injury to all Michigan medical providers that treat motor vehicle accident victims.

172. Sections 3157(2) and (7) create two different fee schedules that discriminate between Michigan medical providers that render reasonably necessary products, services, and accommodations for the care, recovery, or rehabilitation of motor vehicle accident victims. The first of these classes consists of Michigan medical providers that render reasonably necessary products, services, and accommodations that would be compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are reimbursed under § 3157(2) at a rate of 190%



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- 200% of the amount that is compensable by Medicare. The second of these classes consists of Michigan medical providers that render reasonably necessary products, services, and accommodations that are not compensable under the Medicare laws. Providers rendering such products, services, and accommodations to patients in this class are reimbursed under § 3157(7) only at a rate of 52.5% - 55% of the amount these providers charged for those products, services, and accommodations on January 1, 2019. As such, the fee schedules under § 3157(7) reimburse Michigan medical providers at a substantially reduced rate in comparison to § 3157(2).

173. In creating the two classes referenced above, §§ 3157(2) and (7) treat similarly situated Michigan medical providers in a dissimilar manner, thereby imposing a substantial disadvantage upon Michigan medical providers that render reasonably necessary products, services, and accommodations for the care, recovery, or rehabilitation of motor vehicle accident victims that are not compensable by Medicare.

174. The State of Michigan has no rational basis for treating Michigan medical providers that render products, services, and accommodations that are not compensable by Medicare more harshly than the Michigan medical providers that render products, services, and accommodations that are compensable by Medicare. Furthermore, the significant limitations imposed by § 3157(7) are overbroad, overreaching, and not rationally related to any legitimate government purpose.

175. For the reasons stated herein and otherwise, the fee schedule limitations set forth in § 3157(7) violate the constitutional equal protection rights of all Michigan medical providers that render products, services, and accommodations for the care, recovery, or



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rehabilitation of motor vehicle accident victims that are not compensable by Medicare under the Equal Protection Clause, Const 1963 Article 1 § 2.

WHEREFORE, Plaintiff, Ellen M. Andary, a legally incapacitated adult, by and through her Guardian and Conservator, Michael T. Andary, M.D., and Plaintiff Philip Krueger, a legally incapacitated adult, by and through his Guardian, Ronald Krueger, and Plaintiff Eisenhower Center pray that this Court will enter a declaratory judgment, pursuant to MCR 2.605, in favor of Plaintiffs, declaring the following:

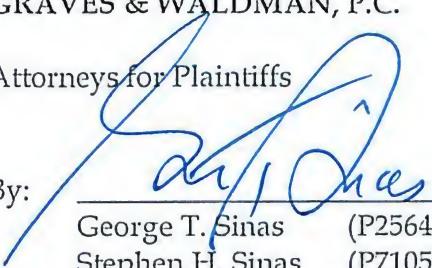
- a. That the fee schedule provisions of § 3157(7) are unconstitutional because they violate Article 1 § 2 of the Michigan Constitution.
- b. That Defendant USAA and Defendant Citizens are prohibited from enforcing the provisions of § 3157(7) as to any Michigan medical provider.

Respectfully submitted:

SINAS, DRAMIS, LARKIN,
GRAVES & WALDMAN, P.C.

Attorneys for Plaintiffs

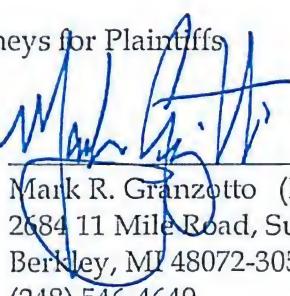
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Dated: October 3, 2019

Dated: October 3, 2019